Williams Pipeline Company *and* Plumbers and Pipefitters Local Union No. 99, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO. Cases 33–CA–9828 and 33–CA–9851

November 23, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

On December 29, 1993, Administrative Law Judge Joel A. Harmatz issued the attached decision. The General Counsel filed limited exceptions, a supporting brief, and a brief in partial support of the administrative law judge's decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified and to adopt the recommended Order as modified and set forth in full below.

1. The judge found, and we agree, that the Respondent violated Section 8(a)(3) of the Act by unlawfully terminating Jay Logan. In making this determination, the judge credited Glen Pride's testimony that, when asked why Logan was not offered employment at the New Baden, Illinois job, the Respondent's owner, Gene Williams, responded that ''there was too much talking going on and he was going to [put] a stop to it one way or another.'' When Pride asked what kind of ''talking,'' Williams said, ''I [Williams] know what he [Logan] was talking about.''[2]

The judge did not address the issue whether Williams' statement violated Section 8(a)(1) apparently because this matter was not specifically alleged in the complaint. For the reasons set forth below, we find merit in the General Counsel's exception and find Williams' statement to be unlawful.

''It is well settled that the Board may find and remedy a violation even in the absence of a specified allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated.'' *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990).

The first part of this test is easily satisfied here. The complaint alleges, inter alia, that Williams made other coercive statements to employees in violation of Section 8(a)(1) and that Williams discharged Logan in violation of Section 8(a)(3) and (1). Union animus is a traditional element of an 8(a)(3) discharge allegation, and the General Counsel asserts that the Williams statement is evidence of the Respondent's hostility toward protected union activity. In fact, the judge properly relied on Williams' ''too much talking'' remark in concluding that he unlawfully discharged Logan. Accordingly, we find that there is a close connection between the violation sought and the subject matter of the complaint.

We also find that the second part of the *Pergament* test is satisfied. At the hearing, there was no objection to Pride's testimony, and the Respondent had an opportunity to cross-examine the witness and further explore the issue. Accordingly, we find that the issue was fairly and fully litigated.

On the merits, we find, in agreement with the judge, that the record as a whole supports the inference that the reference to ''too much talking'' pertained to Logan's protected activities in enlisting the Union's support to enforce the payment of prevailing scale wages at the Heyworth, Illinois jobsite. By stating that he ''was going to put a stop'' to such protected activities, ''one way or another,'' Williams threatened employees with retaliation in violation of Section 8(a)(1) of the Act.[3]

2. The judge found no merit in the complaint allegations that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to pay its employees wages

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In discussing Glen Pride's testimony, the judge in sec. III,D,1, par. 14, mistakenly stated that Williams allegedly said that Jay Logan knew what he was talking about. This error makes no difference in the result in this case.

[3] We disavow footnote 15 of the judge's decision in which he chastised counsel for the General Counsel for raising in her brief 8(a)(1) issues not alleged in the complaint. It is not clear what issue the judge was addressing. To the extent that his comments were intended to refer to the contention that the Respondent violated Sec. 8(a)(1) by stating that the men would get ''screwed'' by the Union, we disagree that that statement was not encompassed in the complaint. We find that the complaint allegation that Gene Williams coercively swore at employees when they expressed a desire for union representation is broad enough to include this statement. To the extent that the judge's remarks were intended to refer to Williams' statement about Logan's ''talking,'' we find, as noted above, that there is no procedural bar to finding this statement to be a violation of the Act.

Similarly, we disavow the judge's comment in sec. III,D,3, par. 3 of his decision suggesting that there was some procedural infirmity in the General Counsel's contention that Glen Pride was constructively discharged in violation of Sec. 8(a)(3) and (1) of the Act. Although the complaint alleged that Glen Pride was unlawfully discharged (rather than specifically alleging an unlawful constructive discharge), the constructive discharge issue was fully litigated at the hearing.

in accordance with the contract wage scale and by failing to make benefit fund contributions on their behalf. For the reasons set forth below, we disagree.

The record establishes that, except for Marty Schuler, the apprentice referred by the Union, the Respondent did not pay contract wages or remit fringe benefit contributions for its employees during periods when they were engaged in pipefitting work at the Heyworth, Illinois jobsite covered by the contract. The judge reasoned that the Respondent was not required to pay contractual wages and benefits to these employees because there was no showing that they had achieved journeyman status or that they were enrolled in an apprenticeship program.

We find that the judge fundamentally misconstrued the contract. Although article III of the collective-bargaining agreement specifies rates of pay only for journeymen and apprentices, the coverage of the contract is set forth in article VII of the agreement, not article III. Article VII provides as follows:

> This Agreement covers the rates of pay, hours and working conditions of all employees engaged in the installation of all plumbing and/or pipefitting systems and component parts thereof, including . . . and all other work included in the trade jurisdiction of the United Association, as set forth in Appendix A which is incorporated herein and made a part of this Agreement.''

Appendix A states, inter alia, that the agreement shall apply to ''all Employees of an Employer employed to perform or performing plumbing, heating, and piping work'' within the Union's geographical jurisdiction. There is nothing in the contract stating that employees performing pipefitting work are excluded from coverage by reason of their lack of skill, training, or experience.

Here, the credited evidence establishes that the Respondent's employees performed pipefitting work within the Union's geographical jurisdiction. Therefore, we find that the contract expressly covers ''the rates of pay, hours, and working conditions'' of the Respondent's employees.[4] Accordingly, we conclude, contrary to the judge, that the Respondent violated Section 8(a)(5) and (1) of the Act by its failure to pay contractual wages to and remit fringe benefits on behalf of its employees who performed plumbing and pipefitting work.

3. The General Counsel excepts to the judge's failure to find that the Respondent violated Section 8(a)(5) by repudiating the collective-bargaining agreement with the Union and by withdrawing recognition from the Union. We agree with the General Counsel and find that the Respondent repudiated its collective-bargaining agreement immediately after executing it on March 3, 1992, and withdrew recognition from the Union in violation of Section 8(a)(5) and (1) of the Act.

Although the Respondent executed a contract with the Union on March 3, 1992, covering pipefitting work on the Heyworth, Illinois jobsite, the only time it ever followed the contract was with respect to the payment of wages and benefits for one apprentice referred from the union hiring hall.[5] Thus, the Respondent never paid its own pipefitter employees the wages provided in the contract and never made any of the required benefit contributions on their behalf. Even the Respondent's token adherence to the contract proved to be short lived because the apprentice worked at most 4 weeks during the first phase of the project (approximately March 3–April 3, 1992). The undisputed testimony shows that when the Respondent returned to Heyworth in May for the second phase of the job, Williams hired new employees without even notifying the Union that he had returned, evicted Union Business Manager Terven when he came to the jobsite to protest the contract violation, and adamantly stated to Terven that ''our apprentice had screwed him to death and that he didn't want any more from the local.''

Viewing the record evidence as a whole, it is apparent that this Respondent never had any intention of complying with its core contractual obligations. The Respondent's failure to pay its regular employees contract wages and fringes from day one is especially telling. As the Board stated in *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063, 1064 (1973), enfd. mem. 505 F.2d 1302 (5th Cir. 1974), cert. denied 423 U.S. 826 (1975), an employer's decision ''to pay its employees for the remainder of the contract's [term] at wage rates below those provided in the collective-bargaining agreement affects what is perhaps the most important element of the many in the employment relationship which Congress remitted to the mandatory process of collective bargaining under the Act.'' The Board cor-

[4] The extrinsic evidence of record concerning the parties' intent supports our interpretation of the contract. Thus, Union Business Manager Ricky Terven testified that in entering into the bargaining agreement with the Respondent, he followed the Union's practice of issuing ''permits'' or ''white papers'' for the Respondent's current employees entitling them to journeymen wage rates. In addition, the record shows that the Union filed a grievance over the Respondent's failure to pay contractual wage rates and benefits, and the grievance was found meritorious by the joint grievance committee responsible for interpreting the agreement. We note that no party has excepted to the judge's ruling at the hearing rejecting the General Counsel's proffer of the pertinent grievance documents.

[5] The contract, which stated that it was effective to April 30, 1992, contained a rollover provision stating that it ''shall remain in effect from year to year thereafter unless objections are made by registered mail by one or more of the interested parties at least 60 days prior to the expiration date, as set forth above, or the yearly expiration date thereafter.'' We agree with the judge's conclusion in footnote 33 of his decision that the contract was automatically renewed and therefore applied to the final stage of the Heyworth job.

rectly reasoned that because so many contract terms are dependent upon the wage rate provision, ''a clear repudiation of the contract's wage provision . . . amounts, as a practical matter, to the striking of a death blow to the contract as a whole, and is thus, in reality, a basic repudiation of the bargaining relationship.''

Oak Cliff-Golman was explicitly followed on this point in *Caamano Bros*., 304 NLRB 24, 27–28 (1991). In that case, the Board held, citing *Oak Cliff-Golman*, that the employer ''effectively repudiated the [collective-bargaining] agreement by failing to apply wage and benefit provisions to the covered employees.'' A close examination of the facts of that case shows that the Board dated the repudiation as of November 1, 1988, even though the employer made contractual health benefit contributions on behalf of at least some unit employees as late as February 1989.[6]

In sum, on March 3, 1992, before the ink was even dry on the signature page, the Respondent disregarded the contract's critical economic provisions. Two months later, when the Respondent returned to the Heyworth jobsite after a brief hiatus, it failed to notify the Union of its presence, and it hired employees in violation of the contractual hiring hall provision. The Respondent made not the slightest effort to resolve its differences with the Union and informed the business manager in no uncertain terms that there was no bargaining relationship between them. On these facts, it would exalt form over substance to accord any weight to the Respondent's payment of contractual wages and fringes to the one apprentice for a 4-week period. The preponderance of the evidence persuades us to find, in accordance with *Oak Cliff-Golman* and *Caamano Bros*., that the Respondent effectively repudiated the collective-bargaining agreement on March 3, 1992. Accordingly, the Respondent's remedial obligations date from that time.

4. The judge found that the Respondent did not violate Section 8(a)(5) and (1) by its failure to deduct and remit union dues. Relying on the Union's failure to submit checkoff authorizations to the Respondent, the judge found that the Respondent had no checkoff obligation. We disagree.

As the judge correctly stated in his decision, the Act prohibits an employer from deducting and remitting union dues unless the employee has executed a written dues-checkoff authorization. Normally, the employer has no checkoff obligation until presented with a signed authorization. In this case, however, we have found that as of March 3, 1992, the Respondent repudiated its collective-bargaining relationship with the Union. It would have been futile for the Union to present dues-checkoff authorizations to the Respondent after the Respondent repudiated the contract.[7] Therefore, we find that after repudiating the contract on March 3, 1992, the Respondent violated Section 8(a)(5) of the Act by failing to deduct and remit union dues for those employees who had signed checkoff authorizations, and shall order the Respondent to remit to the Union dues for employees who signed checkoff authorizations as of that date.[8]

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for Conclusion of Law 4.

''4. The Respondent violated Section 8(a)(1) of the Act about April 6, 1992, by stating to Glen Pride that employee Jay Logan was terminated because there was too much talking and Williams knew what Logan was talking about.''

2. Substitute the following for Conclusion of Law 5.

''5. The Respondent violated Section 8(a)(5) and (1) of the Act by failing to pay its employees wages and fringe benefits as prescribed by the contract since March 3, 1992, and by hiring employees in May 1992 to perform work covered by its collective-bargaining agreement with the Union without first obtaining clearance or referral under the contractual hiring hall procedure.''

3. Add the following as Conclusion of Law 6 and renumber the remaining paragraph.

''6. The Respondent violated Section 8(a)(5) and (1) of the Act on March 3, 1992, by repudiating its collective-bargaining agreement with the Union, by withdrawing recognition from the Union, and, thereafter, by failing to deduct and remit union dues for those employees who had signed checkoff authorizations.''

AMENDED REMEDY

Having found that the Respondent has violated the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Jay Logan, we shall order the Respondent to offer Logan immediate and full reinstatement to his former job or,

[6] We find that in thus dating the repudiation as of November 1, 1988, the Board in *Caamano Bros*. implicitly rejected the rule adopted by our dissenting colleague, i.e., that no contract repudiation violation can be found so long as the employer is following some contract term.

[7] Cf. *Fairleigh Dickinson University*, 253 NLRB 1049, 1050 (1981) (request to bargain would have been futile and therefore not a prerequisite to an 8(a)(5) finding where the employer stated that it was refusing to bargain in order to test the validity of the certification).

[8] We specifically disavow the statements in fn. 39 of the judge's decision regarding the employees' applications for membership in the Union. We note that the dues-checkoff authorizations which Terven possessed, but was unable to submit to Williams on May 19, can be consulted in compliance to assure that no remission of dues is required for any employee who had not signed a valid checkoff authorization. There is, therefore, no danger of countenancing a violation of Sec. 302(c)(4) of the Act, as the judge suggested.

if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In accord with *Sterling Sugars*,[9] the Respondent shall also be required to expunge from its files any and all reference to the unlawful discharge and to notify Logan in writing that this has been done and that evidence of that unlawful discharge will not be used as a basis for future personnel actions against him.

Having found that the Respondent has violated Section 8(a)(5) and (1) by failing to pay contractual wage rates and fringe benefits for its employees since March 3, 1992, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also order the Respondent to make whole its unit employees by making all delinquent fringe benefit contributions, including any additional amounts due the Local 99 benefit funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

Further, having found that the Respondent has violated Section 8(a)(5) and (1) on and after March 3, 1992, by repudiating its collective-bargaining agreement, and by failing to deduct union dues for employees who had executed dues-checkoff authorizations and to remit them to the Union, we shall order the Respondent to abide by the terms and conditions of its collective-bargaining agreement and to make whole its unit employees for any loss of earnings and other benefits suffered as a result of the unlawful action. Backpay shall be computed in accordance with *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra. In addition, we shall order the Respondent to deduct and remit union dues as required by the agreement and to reimburse the Union for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, supra.

[9] 261 NLRB 472 (1982).

Having adopted the judge's finding that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing to comply with its contractual obligation to use the Union's exclusive hiring hall, we shall correct the judge's failure to provide an affirmative remedy and shall order the Respondent to offer immediate and full employment to those applicants who would have been referred to the Respondent for employment through the hiring hall were it not for the Respondent's unlawful conduct, and to make them whole for any loss of earnings and other benefits they may have suffered by reason of the Respondent's failure to hire them. *J. E. Brown Electric*, 315 NLRB 620 (1994). Backpay is to be computed in a manner consistent with *F. W. Woolworth*, supra, with interest thereon as set forth in *New Horizons for the Retarded*, supra. Reinstatement and backpay issues will be resolved by a factual inquiry at the compliance stage of the proceeding. *J. E. Brown Electric*, supra, at 623. In addition, the Respondent shall be required to make whole the appropriate fringe benefit trust funds for losses suffered by reimbursing these funds for contributions that would have been made on behalf of those individuals who would have been referred to work were it not for the Respondent's unlawful failure to use the hiring hall, including any additional amounts due the funds in accordance with *Merryweather Optical*, supra, and to reimburse those individuals for any expenses ensuing from the Respondent's failure to make the required contributions, as set forth in *Kraft Plumbing*, supra, such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and orders that the Respondent, Williams Pipeline Company, Flora, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified and set forth in full below.

1. Cease and desist from

(a) Threatening employees with retaliation for engaging in protected activities.

(b) Discouraging membership in a labor organization by discharging or otherwise discriminating with respect to wages, hours, or other terms and conditions or tenure of employment.

(c) Refusing to bargain in good faith by failing to pay its employees wages and fringe benefits as prescribed by its collective-bargaining agreement.

(d) Refusing to bargain in good faith by failing to hire employees in accord with the hiring hall provisions of its collective-bargaining agreement.

(e) Repudiating its collective-bargaining agreement with Plumbers and Pipefitters Local Union No. 99,

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO, and unlawfully withdrawing recognition from the Union.

(f) Failing to deduct and remit union dues in accordance with its collective-bargaining agreement following the repudiation of that agreement.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Jay Logan immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the amended remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharge of Jay Logan and notify him in writing that this has been done and that the discharge will not be used against him in any way.

(c) Honor, comply with, and abide by the terms and conditions of the collective-bargaining agreement with the Union, including paying the wages and fringe benefits prescribed in the contract, adhering to the hiring hall provisions of the collective-bargaining agreement, and deducting dues as prescribed by the contract for those employees who have signed authorization cards.

(d) Make whole unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's failure to pay contractual wages and benefits and its subsequent contract repudiation, make delinquent benefit fund contributions, and reimburse unit employees for their expenses, all in the manner set forth in the amended remedy section of the decision.

(e) Deduct union dues as of the date of its repudiation of the collective-bargaining agreement for all employees who executed dues-checkoff authorizations and remit those dues to the Union, in the manner set forth in the amended remedy section of this decision.

(f) Offer immediate and full employment to those applicants who would have been referred to the Respondent for employment through the Union's hiring hall were it not for the Respondent's unlawful conduct and make them whole for any loss of earnings and other benefits that resulted from the Respondent's unlawful failure to apply the hiring hall provisions of the contract, including making the necessary contributions on behalf of such applicants to the appropriate fringe benefit funds as provided in the collective-bargaining agreement and reimbursing the employees for their expenses, all in the manner set forth in the amended remedy section of the decision.

(g) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Post at its facilities in Flora, Illinois, copies of the attached notice marked ''Appendix.''[10] Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER STEPHENS, dissenting in part.

I agree with my colleagues in their resolution of all issues except that I would not issue a general reinstatement order to remedy the contract repudiation violation;[1] and, for the following reasons, I would find that the repudiation of the contractual relationship occurred on May 19, 1992, rather than, as my colleagues have found, on March 3, the date of contract execution.

As the undisputed facts show, after signing the contract, the Respondent abided by it in part—accepting a referral (Marty Schuler) from the Union's hiring hall and paying him wages and benefits pursuant to the contract. It seriously breached the contract in other respects, however, by evading the hiring hall in its use of two employees and by not paying contract wages and benefits to employees other than Schuler because of its ill-founded contention that the contract did not apply to them. This conduct clearly warranted a finding of unilateral contract modification in violation of Section 8(a)(5) and (1), but my colleagues' conclusion that it warrants a finding of total repudiation of the contractual relationship is, in my view, based on a misreading of Board precedent.

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[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[1] I would not grant the general reinstatement order for the reasons stated in my concurring opinion in *J. E. Brown Electric*, 315 NLRB 620 (1994), concerning the appropriate remedy for violations of hiring hall clauses. I agree that a reinstatement order is the appropriate remedy for the unlawful discharge of employee Jay Logan.

In *Oak Cliff-Golman Baking Co*., 207 NLRB 1063, 1064 (1973), enfd. mem. 505 F.2d 1302 (5th Cir. 1974), cert. denied 423 U.S. 826 (1975), the Board found that the respondent employer, like the Respondent here, violated Section 8(a)(5) by unilaterally modifying important provisions of the contract. As reflected in the Order adopted by the Board in that case,[2] the Board did not enlarge the contract modification violation into a broader finding of total contract repudiation and withdrawal from the bargaining relationship. The language on which my colleagues rely was employed to answer the respondent employer's argument that breaches of contract should be dealt with solely through judicial enforcement procedures and should not be dealt with as unfair labor practices by the Board. The Board was making the point that it was acting within its statutory mandate in remedying an employer's repudiation of a contract clause embodying so important a term and condition of employment as wages.

In *Caamano Bros*., 304 NLRB 24 (1991), also cited by my colleagues, the judge's decision states that the respondent ''admitted substantially'' all the General Counsel's evidence concerning contract repudiation, id. at 27, and defended solely on the meritless ground that it was not bound by the contract ''at all.'' Id. at 28. The Board adopted the judge's decision with only two brief footnotes. Under these circumstances, it does not appear that the contract-repudiation-versus-contract modification issue presented here was actually argued and decided in *Caamano Bros*. Therefore, I do not regard the case as controlling precedent on that question.

In sum, I agree that the General Counsel proved by a preponderance of the evidence that the Respondent engaged in a total repudiation of the contract on May 19, 1992, when Williams rebuffed all attempts of Union Business Manager Terven to discuss apparent contract violations and ejected him from the premises with the declaration that he wanted no more workers from the union hall. I do not agree that the record establishes a total repudiation prior to that date.

[2] 202 NLRB 614, 618 (1973). The Board's decision published at 207 NLRB 1063 was the second decision in the case, issued after the Board had withdrawn the case from an appellate court in which the employer had sought review. The Board reaffirmed its original order, but provided answers to two arguments of the employer, namely that the issues should have been deferred to arbitration and that Congress did not intend for the Board to deal with contract violations.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten our employees with retaliation for engaging in protected activities.

WE WILL NOT discourage membership in Plumbers and Pipefitters Local Union No. 99, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO, or any other labor organization, by discharging employees or otherwise discriminating with respect to employee wages, hours or other terms and conditions or tenure of employment.

WE WILL NOT refuse to bargain in good faith by failing to pay contractual wages and benefits.

WE WILL NOT refuse to bargain in good faith by failing to hire employees in accord with the hiring hall provisions set forth in our collective-bargaining agreement with Local 99.

WE WILL NOT repudiate our collective-bargaining agreement with Local 99 and WE WILL NOT unlawfully withdraw recognition from Local 99.

WE WILL NOT fail to deduct and remit union dues as required by our collective-bargaining agreement following repudiation of that agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Jay Logan immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to the unlawful discharge of Jay Logan and notify him in writing that this has been done and that the discharge will not be used against him in any way.

WE WILL honor, comply with, and abide by the terms and conditions of the collective-bargaining agreement with the Union, including paying the wages and fringe benefits prescribed in the contract, adhering to the hiring hall provisions of the collective-bargaining agreement, and deducting dues as prescribed by the contract for those employees who have signed authorization cards.

WE WILL make our employees whole with interest for any loss of earnings and other benefits resulting from our failure to pay contractual wages and benefits and our subsequent contract repudiation, and WE WILL make all delinquent fringe benefit contributions required by our contract with Local 99 and reimburse employees for their expenses resulting from our unlawful failure to make the required contributions.

WE WILL deduct union dues as of the date of our repudiation of the collective-bargaining agreement for all employees who executed dues-checkoff authorizations and remit those dues to the Union.

WE WILL offer immediate and full employment to those applicants who would have been referred to us for employment through the Union's hiring hall were it not for our unlawful conduct and make them whole for any loss of earnings and other benefits they may have suffered as a result of our failure to apply the hiring hall provisions of the collective-bargaining agreement, and WE WILL make the necessary contributions on their behalf to the appropriate fringe benefit funds and reimburse the employees for their expenses resulting from our unlawful failure to make the required contributions.

WILLIAMS PIPELINE COMPANY

Judy Poltz, Esq., for the General Counsel.
Gene Williams, pro se, of Flora, Illinois, and *David E. Krchak, Esq. (Thomas, Mamer & Haughey)*, of Champaign, Illinois, for the Respondent.
William C. Cavanagh, Esq. (Cavanagh and O'Hara), of Springfield, Illinois, and *Ricky S. Terven*, Business Agent, of Bloomington, Illinois, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge. This case was tried in Champaign, Illinois, on August 4, 1993, on an initial unfair labor practice charge filed on May 21, 1992,[1] and a complaint issued on March 11, 1993, alleging that the Respondent independently violated Section 8(a)(1) of the Act by denouncing employees with profanities because they expressed a desire to seek union representation, and violated Section 8(a)(3) and (1) by discharging Jay Logan, Glen Pride, and Jerome Pride, in retaliation for their union activity. The complaint further alleged that the Respondent violated Section 8(a)(5) and (1) of the Act when it repudiated an existing collective-bargaining agreement by failing to make fringe benefit contributions, refusing to pay contractual wage rates, failing to deduct and remit union dues, and failing to adhere to a contractual referral and hiring procedure. In its duly filed answer, the Respondent denied that any unfair labor practices were committed.

[1] All dates refer to 1992, unless otherwise indicated.

On the entire record,[2] including my observation of the witnesses and their demeanor, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a sole proprietorship, owned and operated by Gene Williams, who from his place of business in Flora, Illinois, is engaged as a plumbing and pipefitting contractor in the construction industry. In the course of that operation, the Respondent, during the 12 months preceding issuance of the complaint, provided services valued in excess of $50,000 to the city of Heyworth, Illinois, which meets the Board's direct inflow and direct outflow jurisdictional standards. During that same period, the Respondent purchased and caused to be shipped to its Flora, Illinois facility and various jobsites in the State of Illinois goods and materials valued in excess of $50,000 shipped directly from outside the State of Illinois.

The complaint alleges, the answer admits, and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Plumbers and Pipefitters, Local Union No. 99, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Preliminary Statement*

The Respondent is a contractor engaged in the installation of utility pipelines for various municipalities in the State of

[2] At the hearing, I granted the General Counsel's request to amend subpars. 5(c) and (d) of the consolidated complaint. Following close of the hearing, a motion to reconsider was submitted on behalf of the Respondent, specifically contesting the revision to subpar. 5(c) on the stated ground that the changed increased the Respondent's potential liability. In this regard, more than 4 months prior to the hearing the Regional Director issued an erratum correcting the date appearing in subpar. 5(c). G.C. Exh. 1(t). The correction, however, was not the substantive equivalent of either the amendment requested by the General Counsel at the hearing, or that granted by me. Hence, contrary to the General Counsel, the earlier action by the Regional Director is not completely dispositive of the issue in its present form. Nevertheless, my rulings are reaffirmed. A continuance to support either change, if requested by the Respondent, would have been inappropriate. The revision to subpar. 5(c) did not affect the merits, but pertained solely to the scope of any appropriate remedy. Beyond that, the request for reconsideration does not address the amendment to subpar. 5(d), a change that, likewise, could not affect the Respondent's proof responsibility. Moreover, the motion for reconsideration neglects to demonstrate that either ruling in any manner affected the scope of the litigation or the Respondent's ability fully to present its defense to the unfair labor practice allegations. For this reason, and as there is no basis for assuming that the Respondent was in any sense prejudiced in this regard, the motion is rejected as lacking in merit.

Illinois. Prior to March 1992, it had operated in southern Illinois, where it always worked nonunion, utilizing employees as needed to perform all work called for without respecting craft lines routinely enforced in the organized sector of the construction trades. In March 1992, the Respondent started a project that called for installation and hookup of water lines in Heyworth, Illinois. The job was within the jurisdiction of the Charging Party and further north than any previously performed by the Respondent.[3] It was also subject to protective labor legislation at the state level which required payment of prevailing wages and fringe benefits for particular classes of work.

The Heyworth job included work within the traditional craft jurisdiction of the Charging Union as well as work historically performed by operators represented by the Independent Union of Operating Engineers and laborers represented by the Laborers Union. The complaint is founded essentially on alleged discrimination that occurred after the Respondent executed a collective-bargaining agreement with the Charging Party covering plumbing and pipefitting work on the Heyworth job.[4] It is also alleged that, in connection with that job, the Respondent, during the same timeframe, repudiated that agreement as evidenced by its failure to pay union scale for covered work, to adhere to hiring requirements, and to remit fringe benefit contributions and union dues.[5]

B. *The Union Activity*

Organization of the Heyworth job was from the outside in. Ricky Terven, the Union's business manager, having learned that the Respondent had landed the Heyworth job, well prior to the commencement of work, contacted Gene Williams by telephone, inquiring as to whether he was a union contractor ''and if he wasn't, what I could do to make him a union contractor.'' He was told by Williams that he would talk to him when he got to Heyworth and would call before arriving. Later, Terven in late February met with Williams at the job. There was some discussion as to why Williams had not called as promised, and then the Union's contract was discussed. Williams requested and was given a few days to consider whether he would sign. Neither contact was preceded by effort on the part of the Union to organize the Respondent's employees on the Heyworth jobsite. After meeting with Williams, Terven met with two employees, who expressed a strong interest in joining the Union.

Williams again neglected to contact the Union as agreed. Having received no response, Terven, on March 3, accompanied by John Penn, the business manager from the Laborers Union, returned to the jobsite. Williams apparently initially resisted the contract demands expressing concern that he would have to get rid of his crew. Terven indicated that this would pose no problem, but, as he put it, ''We would also like him to hire one of our guys.'' Terven explained that the Union could issue a ''permit'' allowing him to use his own men on the job.[6] On that very day, Gene Williams executed the Union's collective-bargaining agreement binding him to adhere to its terms in connection with utility piping and plumbing work performed by its employees ''within the geographical jurisdiction allocated to the local union by the United Association.''[7] He also signed an agreement with the Laborers Union in connection with this project, filling a single position under that contract through a hiring hall referral.

Brad Williams,[8] Jay Logan, and Glen Pride were on the Heyworth job from the outset. Later, Jerome Pride came on the job.[9] All three had been employed by the Respondent in the past. It is my understanding that employees first learned of union activity when the Charging Party's business agent, Rick Terven, was observed in the above-described late-February discussion with Gene Williams.[10] Testimony indicates that union membership documents were executed by the Pride brothers and Logan. The sequence is somewhat confused. Logan testified that after he seemingly observed Gene Williams sign the labor contract, Terven approached to report that Williams was ''signing'' and asked the employees if they were still interested in joining the Union. Logan allegedly executed his membership application and checkoff authorizations on March 4. (G.C. Exhs. 7, 8, and 9.) However, Glen Pride's papers indicate that he signed on March 2. (G.C. Exh. 15, 16, and 17.) He claims that his brother, Jerome also executed the documents and gave them to him,[11]

[3] The record includes a strong suggestion that the construction trades in southern Illinois are less prone to union organization than in the northern part of the State.

[4] There is no evidence that the Respondent, within the timeframe relevant to this proceeding, engaged in any projects covered by that contract other than the Heyworth job.

[5] Earlier, it appeared that the matters in controversy had been fully adjusted when, on December 4, 1992, the Respondent executed an informal settlement stipulation. The Respondent admittedly breached that agreement, prompting the Regional Director to withdraw approval of the settlement and again to set down this case for hearing. This proceeding is not the equivalent of an action for specific performance of that agreement, and the Respondent did not thereby forfeit his right to balanced evaluation of the record. Moreover, the violation of the settlement agreement did not relieve the General Counsel of its burden of substantiating each and every unfair labor practice allegation by a preponderance of the evidence.

[6] Terven equated this with permits issued by the Union under the ''48-hour'' exception to the hiring hall arrangement as described in the master agreement, sec. 10.9. That provision, however, limits a signatory's direct hiring to ''Journeymen.'' Any special arrangement that overlooks that requirement arouses curiosity since a clear departure from the sanctity of the ''craft' and the traditional interest of building trade unions in preserving and protecting the special skills of its membership.

[7] G.C.Exh. 5. The Respondent thereby became bound, when performing in the covered area, to the terms of Local 99's multiemployer contract with the Plumbing and Heating Contractors Association of Bloomington and Normal, Illinois. G.C. Exh. 4.

[8] Brad Williams was a cousin to Gene Williams. He operated the backhoe on the job.

[9] Gene Williams testified that this was the case. The General Counsel disagrees based essentially on testimony by Glen Pride that Jerome executed his union documents on March 2. However, Glen Pride did not testify that his brother actually was on payroll status at the time. It is within the realm of possibility that Jerome Pride, who did not appear as a witness, did so in anticipation of employment. There is no clear conflict, and in any event the issue is of no material consequence.

[10] Logan related that on the first or second day at Heyworth after Glen Pride reported that Terven was talking to Gene Williams, he approached Gene Williams concerning the Union and was told, ''yes, Jay, I am going to get you a union card.''

[11] G.C. Exhs. 18, 19, and 20. Jerome Pride's application for membership bears the signature date of ''2/5/92.'' The discrepancy was

Continued

whereupon both sets were given to Marty Schuler.[12] Terven did not testify that membership was actually conferred pursuant to these applications,[13] nor did he testify that checkoff authorizations were ever actually delivered to the Respondent.

C. *Interference, Restraint, and Coercion*

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act when, in late February or early March, Gene Williams ''coercively swore at employees when they expressed a desire to sign union cards and requested union representation.''

The only suggestion of negative comments toward the Union by Williams appears in testimony by Jay Logan and Glen Pride. Logan related that the day after Terven's initial appearance, Williams told both himself and Glen Pride that he would not sign a union contract. He claims that both he and Pride declared that they wanted the contract and wanted to work with the Union. With this, Williams allegedly became ''agitated,'' declaring that ''the union was going to screw us and he wasn't going to sign a union contract.'' According to Logan, these conversations continued, with Williams adopting an ambivalent stance, sometimes ''cussing'' and ''complaining'' about the Union and at other times stating that ''he was going to do it for us guys.'' Logan opined that the employees were confused as to just what he was going to do.

Glen Pride, though identified by Logan as present during this exchange, testified that Gene Williams expressed no objection to the fact that they had signed, but wished them the best. Concerning the contract, when not prompted by leading questions, Pride averred that Williams declared that ''as long as we got our full cards, he didn't mind signing the contract,'' while reiterating that the men were ''going to get screwed.'' To this extent, Pride's testimony made sense.[14] The reference to ''full cards'' was admittedly understood as a reference by Williams to documentation issued by the Union to acknowledge that workers had achieved journeyman status. His argument that the men would get ''screwed'' was consistent with testimony by Terven that Williams expressed concern that his employees would be replaced under demands of a union contract, as well as Williams' understanding expressed repeatedly at the hearing that employees on this job, other than Schuler, did not qualify for contractual benefits because they were neither in the Union's apprenticeship program, nor journeymen pipefitters. In context, I find the commentary that the men would get screwed by the Union constituted legitimate argumentation protected by Section 8(c) of the Act. Accordingly, I shall dismiss the 8(a)(1) allegation attributed to Gene Williams under this complaint.[15]

D. *The Alleged Discrimination*

1. The termination of Jay Logan

Logan was initially employed by the Respondent in November 1990. He worked on jobs in Claremont and Virden, Illinois, before moving on to Heyworth. There is no denial that these were the only jobs worked by the Respondent since Logan's hire. Nor did Williams attempt to refute testimony that his crew was customarily transferred as he was awarded new jobs.[16]

The Respondent suspended work at Heyworth on or about April 3. On the following Monday, April 6, the Respondent began another project in New Badin, Illinois, a job outside the Union's jurisdiction. Logan did not work at New Badin. However, the Pride brothers and Brad Williams were transferred to New Badin.

At the threshold of the alleged discrimination in Logan's case is the question of whether he had declined to work that job on an offer by the Respondent, and hence voluntarily quit. Thus, Gene Williams testified that upon moving his crew to New Badin, he contacted Logan, offering him work. Williams asserts that Logan refused, suggesting that he use Jerome Pride on that job.[17]

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unexplained, but is insufficient to arouse suspicion as to Glen Pride's authentication of the document. G.C. Exh. 18.

[12] Schuler would not have been on the job until after the contract was executed since he appeared pursuant to referral from the Union's hiring hall.

[13] As I understand Terven, the documents were forwarded to the International, but not acted upon because of difficulties in finding ''where to put'' the three applicants for membership. His references to the need for ''schooling'' is consistent with my understanding of just who craft unions are willing to recognize as ''Journeymen.''

[14] I reject the testimony of Pride and Logan that Williams at any time, on an unqualified basis, said that he would not sign a union contract. Pride gave no indication that this was the case until led through a broad prejudicial question propounded by counsel for the General Counsel as to whether ''Gene Williams expressed or made the statement that he would not sign a union contract.'' I believe that he made a remark that he would not sign unless the men were protected against removal from the job by action on the part of the Union recognizing them as journeyman. Moreover, if such an unqualified remark was made, curiosity is aroused as to the complaint's treatment of the issue. For, the precise allegation set forth in the complaint, on its face, is of dubious legal sufficiency. On the other hand, the precedent stubbornly interdicts managerial declarations that organization would be futile. Yet, this more familiar violation was not alleged. Even were I to find that Williams declared he would not sign under conditions indicating that organizational pursuits would prove futile, considering the circumstances under which this case was litigated, I would not conclude that issue was not joined with sufficient clarity and completeness to warrant a remedy.

[15] In my opinion, the independent 8(a)(1) allegation specified in the complaint is specific, albeit insubstantial. Counsel for the General Counsel uses a spray gun approach to this section of the Act applying it to theories neither suggested by allegation in terms of content or timeframe. Not only do I disapprove of the approach but I find that matters unveiled for the first time in the briefing stage never might be blessed as fully litigated. Beyond that, prosecution by afterthought has gone too far. It is about time that those responsible for vindicating the ''public rights'' under this Act took a hard look at the slight regard given to the pleading process by those entrusted with the prosecutorial function. Somehow the message must be driven home that time spent in briefing unalleged issues is better spent in conforming complaint to prehearing affidavits.

[16] Logan testified, without contradiction, that since his employment began with the Respondent, he was called to work on all jobs successfully bid by that firm. He was hired on Claremont job. To his knowledge, Williams bid no jobs until Virden, Illinois, and for this reason he sought and obtained work elsewhere. Later, Williams called him to work on that job. After Virden, the crew was down for about 3 weeks, but then went straight to Heyworth.

[17] On this record, it makes no sense that Logan would have made such a suggestion. Williams did not testify that the job at new Badin could not accommodate the entire crew, including Jerome Pride. Nor

Williams testified that he returned to the Heyworth job in May.[18] His crew consisted of Brad Williams, Jeff Allen, Mike Lusk, and Glen Pride. Mike Lusk and Jeff Allen, who were hired at New Badin, worked as laborers and assisted Glen Pride who did the pipefitting work, along with a local licensed plumber that Williams retained under conditions raising the possibility that he may have been an independent contractor.[19] He concedes that on returning to Heyworth, Logan called to inquire about returning to work. Williams adds that he informed Logan that demands on that job had declined to the point where his service were not needed. It is clear that, after April 3, Williams never again offered work to Logan.

Logan squarely contradicts Williams' testimony that he was offered a job at New Badin. or that he was ever offered employment after April 3. His explanation as to why he failed to make the New Badin trip appears in the following colloquy with counsel for the General Counsel.

> Q. How did your employment with Gene Williams come to an end?
>
> A. I got out of the truck there at home Friday, was the last that I ever worked for Gene.
>
> Q. What, if anything, were you told about further work?
>
> A. I wasn't really told. I knew we had the New Badin job to do and I just assumed that we were going to go right over on it.
>
> Q. Did you ever go to work on the New Badin job.
>
> A. No, I never did go to work?
>
> Q. . . . You say you were never asked. Is there any custom or practice regarding being asked to or told to go to any particular job.?
>
> A. Certainly. When we go from one job to the next, you know, we talk about what time we was going to leave out and what route we was going to take, we always talked about that.
>
> Q. Who from the company would you speak with about those details?
>
> A. It would have been Gene Williams?
>
> Q. What, if anything, were you told by Gene Williams about the New Badin job?
>
> A. I never was really told anything about it. I more or less asked him a time or two what the job consisted of and we never talked much about that job.

More importantly, Logan testified that after April 3 he telephoned Williams on numerous occasions and asked about employment. He was put off, being told that he would not be needed for a few days and to call back. When he again called, the results were uneventful. Later after receiving a report that his work at New Badin was being performed by a newly hired 18-year-old nephew of Brad Williams, he reached Williams asking, ''why I wasn't working and this kid was . . . .'' He was told that the individual was hired at request of Brad Williams, who wanted his own personal hand to ''run and fetch for him.'' In that conversation, Williams added that he felt there was a lot of loafing going on and that ''he was going to get rid of us one at a time to find out who it was.''[20]

I credit Logan over Williams. The latter was a basically unreliable witness who piled excuse upon excuse for a variety of personal failures, few of which rang true. Logan's account was corroborated by Glen Pride, an honest witness, who testified that on April 6, Williams implied that he had denied employment to Logan at New Badin. Moreover, apart from demeanor, Logan's account was more logical, and backed by documentation. Thus, his April and May telephone bills confirm that he initiated a number of calls to the Respondent, including one on Saturday, April 4, and two on Monday, April 6, the first lasting 13 minutes and the second, 6 minutes. Again on Tuesday, April 7, there were three separate calls.[21] These telephone billings are logically more compatible with the fact that Logan was pursing work in earnest at the New Badin job. The record permits no other explanation. It is inconceivable that Logan, during this timeframe, found it necessary to initiate five telephone calls and to participate in lengthy discussion just to advise Williams that he did not wish to work at New Badin. I find that Logan did not go to New Badin because the Respondent replaced him on that job.

Having concluded that Logan was in fact discharged, the sole defense proffered by the Respondent has been negated. Hence the General Counsel's ultimate proof responsibility is limited to mere satisfaction of the prima facie case required by *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981). This is accomplished simply upon a showing that warrants an inference that protected activity was at least ''a'' part of the employer's motive.

I am unwilling to draw any conclusion that Logan's membership or organizational activity might have had anything to do with his termination. The Respondent signed an agreement with the Union on March 3. Logan did not sign his membership application and checkoff authorizations until the next day. From all appearances on this record, Gene Wil-

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did Logan have reason, at the time, to assume otherwise. Moreover, in actuality, since the crew at New Badin later would be increased, the record does not warrant assumption that Logan's preference impacted upon Jerome Pride's job opportunity at New Badin. I find that the Logan made no any statement to Williams implying that he would make room for the latter by abstaining.

[18] The New Badin job continued for about 2 or 3 weeks. The operation then returned to Heyworth for completion of that job. Among the blind alleys in this record, was testimony elicited from Terven that the Respondent, before embarking on the New Badin job, left Heyworth only to return in early April to perform ''clean-up'' work. It is the sense of Terven's testimony that thereafter the Respondent left for new Badin, only to return to Heyworth on a second occasion in mid-May. I believe that Terven was confused in this regard and that his testimony related to a visit to the jobsite after completion of the New Badin job.

[19] Williams concedes that he had previously done this same work in-house, using Marty Schuler.

[20] Logan credibly testified that not once in his employment with the Respondent had he received any form of discipline or criticism concerning his work. Williams also testified that, at Heyworth, the city had informed him that the Pride brothers and Logan were drinking when off duty. Williams, who admitted to having a few himself, admitted that this stopped after he told the men to stop parking company vehicles at the local saloon. He relates that their drinking had a history that preceded the Heyworth job. Neither ''loafing'' nor drinking affected employability of these individuals before the events involved in this proceeding.

[21] G.C. Exhs. 11 and 12. Also noteworthy are additional billings that evidence separate 15-minute conversations, one on April 21 and a second on April 27.

liams was never furnished these documents nor made aware of their execution.[22] Although Logan testified that earlier, he and the others, including Jerome Pride had told Williams that they wanted him to sign a contract, I do not believe that in actuality, or in the mind of Gene Williams, the sentiment of Logan and the Pride brothers was of any influence to his willful April 3 execution of either labor contract. I believe it more compelling that Williams was operating in a previously uncharted territory and was guided by other pressures in electing to operate this job pursuant to union contracts.[23] On this issue, the Respondent is entitled to the benefit of the doubt, and I am unwilling to infer that the General Counsel has demonstrated that organizational activity on the part of Logan, to any extent contributed to his termination.

However, there are other manifestations of union activity that are protected by the Act. In this connection, Logan testified, without contradiction, that his duties at Heyworth included the assembly of 4 and 6 inch PVC pipe, fittings, valves, and things of that nature. This would fall within the traditional craft jurisdiction of the Charging Party and the agreement signed on March 3 by the Respondent. Under the laws of Illinois, on the Heyworth job, the Respondent was obligated to pay the prevailing wage scale for that type of work. Terven credibly testified that the rate required by law for pipefitting work was identical to that set forth in its collective-bargaining agreement. Williams concedes that he paid the Heyworth crew at laborers' rates irrespective of the work performed, and argued that because none were journeymen pipefitters they were ineligible for any higher rates.[24]

Logan testified that during March, after he signed with the Union, he spoke to Marty Schuler about wages. The latter indicated that the men were not being paid according to scale. The next day, Logan and Jerome Pride went to the union hall, where they informed Rick Terven of their rates. He agreed that they were not even being compensated at the ''prevailing wage'' for the job required by the Government. Terven requested that Logan provide his paystubs.

Terven testified that after his meeting with Logan and Jerome Pride, and learning from Schuler that the Respondent was not paying the required wage, on or about March 20, he visited the job, where he informed Williams that the men had to be brought up to the prevailing wage. Williams replied that his wage levels were in conformity with the Union's requirements.

Terven confirmed that on that visit, Logan provided him with two paystubs as he had requested.[25] According to Terven, Logan requested that this be maintained in confidence ''because he wanted his job, he wanted the money he deserved, but he didn't want to cause a fracas because he was afraid he would lose his job.''[26] Terven testified that he gave no information to Williams that would identify who had reported the wage discrepancy.[27]

On the issue of knowledge, according to Logan, the day after his visit to the union hall with Jerome Pride he informed Gene Williams ''that the business agent at 99 said he wasn't paying prevailing wage on the job.'' In response, Williams, allegedly ''swore,''[28] declaring, ''I can work any kind of hand I want to, carpenters, laborers, fitters, anybody I want to work on the job.''[29] Additional light is cast on

[22] As heretofore indicated, Terven allegedly issued permits on behalf of the Pride brothers and Logan on the Heyworth jobsite. None testified to receiving any such documents. In fact Glen Pride testified that his curiosity as to when he would receive his ''union card'' was never satisfied. Terven also testified that clearances were mailed to the Respondent covering all three employees. However, on this document, the clearance for the Pride brothers bears a date of March 3, 1992. Logan's is dated November 6, 1992, well after his cessation of employment with the Respondent. At the hearing, Gene Williams, while still under oath, represented that he never received the clearances. The discrepancy between the documents and Terven's testimony is not explained. In this light, I discredit Terven insofar as his testimony is susceptible to interpretation that any permit or clearance was mailed to the Respondent at times material to this proceeding.

[23] Any sentiment expressed by these employees would be eclipsed by the conduct of Brad Williams. Thus, according to Glen Pride, Brad Williams, a backhoe operator, and a member of the Operating Engineers Union had declared that he would not work this job if performed nonunion. It is entirely possible that Brad Williams took this stance on this job because the area was nonunion, thus, enhancing the chance that violation of his internal union obligations might be detected.

[24] As shall be seen, the Respondent's position was correct as a matter of contract. However, it furnished no defense under Federal and state prevailing wage laws. These laws are designed to preserve local rates in the construction industry against erosion from outside labor paid to perform particular crafts at lower rates. This latter practice is discouraged by requiring all contractors to pay the prevailing rate as to each type of craft work performed whether the the workers be qualified journeymen or within an established apprenticeship program. Simply put, the obligations incurred under prevailing wage laws are not avoided by hiring the unskilled to perform in skilled areas. Yet, as shall be seen, the Charging Party's contract prescribes no wage scale for those not classified as journeymen or apprentices.

[25] G.C. Exh. 10.

[26] The evidence does not establish that Williams was aware that Logan had that Logan had delivered the pay stubs to Terven. Logan did not testify that this was the case, but simply offered that Gene Williams knew that he had spoken with Terven that day. However, this was not uncommon as the men, during Terven's visits to the job, often conversed with him within eyeshot of Williams. Logan's testimony as to the paystub exchange merely suffices to place the incident within this general category.

[27] Terven, having received the paystubs, contacted the Illinois Department of Labor by phone requesting an investigation, explaining that he was making the contact because the employee affected was afraid that he would lose his job if he reported on his boss. By letter dated March 23, Terven formalized the request for action by the State. G.C. Exh. 22. Williams denied that Terven had complained to him, during this time period, concerning the nonpayment of prevailing rates for pipefitters work. I credit the more plausible testimony of Terven, which received indirect confirmation from Logan as well as the formal complaint he made to the State.

[28] The nature of the language used is undisclosed. Hence, whether it was inherently coercive, abusive, or generally profane is not subject to independent assessment.

[29] Logan identified the Pride brothers, and possibly Brad Williams, as present on that occasion. Only Glen Pride testified and an attempt was made, through him, to corroborate Logan. However, the only testimony exacted was a declaration allegedly made by Williams that ''he could just hire and fire whoever he wanted.'' There was no indication as to when the remark was made or just what might have prompted it. In fact Pride could not recall any conversation with Williams in which the latter was accused of not paying the prevailing wage. That gap is not filled by Logan's testimony that a few days later, he overheard a conversation at the jobsite between Gene Williams and an inspector employed by Farnsworth & Wiley, the engineering firm on the job. As Williams complained that the Union

Williams' failure to retain Logan at New Badin by Glen Pride whose testimony as a whole reflected an objectivity not always found on the part of an alleged discriminatee. Pride testified that on the Monday after Logan's termination, he asked Williams why Logan was not working. The latter allegedly replied:

> [T]here was too much talking going on and he was going to be a stop to it, one way or another.

When Pride inquired as to the nature of the ''talking,'' Williams allegedly stated that Logan knew what he was talking about. The testimony of Logan and Glen Pride stands uncontradicted and is credited. Against the background of what had transpired at Heyworth, there is no suggestion that the reference to talking pertained to anything other than that which led to the Union's intervention to enforce payment of scale allegedly due under both union contract and Illinois statute. I find that an inference is warranted that Jay Logan's conversations with coworkers concerning prevailing wage issues and his enlistment of the Union's support in that endeavor was suspected by Gene Williams, and ultimately led to his termination. Accordingly, and as the Respondent has failed to produce any credible proof that Logan would have been terminated even if he had not engaged in such activity, it is concluded on balance, that the General Counsel has established by a preponderance of the evidence that Logan was discharged in violation of Section 8(a)(3) and (1) of the Act.

2. Jerome Pride

Unlike Logan, the Pride brothers worked at New Badin. On arrival they found that two newcomers; namely, Johnny Williams (Brad's nephew) and Jeff Allen, were on the job. According to Glen Pride, after working a few days, Gene Williams declared:

> [T]here ain't enough work for all you boys, so a couple of you are going to have to stay home.

In consequence, he and Jerome were selected for a temporary, 2-day layoff. According to Glen Pride, the other three employees continued to work.

The Pride brothers were not discharged, as the complaint alleges, but both quit. By way of posthearing brief, counsel for the General Counsel argues that they were constructively discharged. In support, the General Counsel observes:

> The Board has held that a constructive discharge occurs when an employer imposes burdens upon an employee which cause, and are intended to cause, a change in working conditions so difficult or unpleasant as to force the employee to resign.

By definition, the violation turns upon the alleged discriminatee's reasons for quitting. Jerome Pride was not available to testify. The only evidence that might bear upon the intent behind his resignation was supplied by Glen Pride. Thus, when questioned by counsel for the General Counsel as to why Jerome Pride quit, Glen Pride answered:

> [Jerome] got mad because he was needing the work, the work was there, but Gene wasn't working. He was working Johnny, Jeff and Brad. . . . [T]hen Jerome got mad and wanted to know why he wasn't working and everybody else was working. Jerome told me he would whip his ass. . . . Jerome said Gene didn't fire him. Jerome just said, take a flying leap and never did show back up for work.

It is difficult to understand why this allegation has been pursued. People leave jobs every day for a multitude of reasons having nothing to do with statutory concerns. Their public explanation are not always accurate. This record contains no direct primary evidence as to just what prompted Jerome Pride to do so. His true concerns were never verified under oath, and could not be tested through cross-examination. In short, the only evidence tendered in this regard was uncorroborated hearsay in its rawest form.

Jerome Pride's case is flawed in other respects. Even were the above evidence probative, the premise for a constructive discharge is lacking. The law does not afford a remedy to all union sympathizers[30] who quit their jobs just because the boss has made them unhappy. See, e.g., *Algreco Sportswear Co*., 271 NLRB 499, 500 (1984); *Adscon, Inc*., 290 NLRB 501, 502 (1988). The complaint in this case not only omits allegation of any constructive discharge or that Jerome Pride quit because of an intolerable condition of work, but it also fails to contest the legitimacy of the temporary New Badin layoff. See, e.g., *Comfort Inn*, 301 NLRB 714, 717, fn. 17 (1991). That issue has not been litigated, and under no circumstances might it be presumed unlawful. I am aware of no precedent deeming a layoff of a union sympathizer, even though out of seniority order presumptively intolerable. In these circumstances, any grievance held by Jerome Pride as to his layoff would not suffice to convert his voluntary quit to a constructive discharge.

For all the above reasons, the claim that Jerome Pride was victimized by discrimination is viewed as basically frivolous. On the one hand, it is unsupported by evidence meeting basic standards of reliability. Moreover, even if probative, this explanation for his resignation would not warrant Board intervention. The 8(a)(3) and (1) allegations in his case are dismissed.[31]

3. Glen Pride

Glen Pride was hired in 1990, and according to his undenied testimony worked thereafter whenever Gene Williams landed had a job. He laid water lines and also installed taps connecting water lines to homes. As indicated, he signed his union membership documents on March 2. (G.C. Exhs. 15, 16, and 17.) Glen Pride testified that Gene Williams

was giving him trouble, the inspector informed that if they were doing pipefitters work they had to be paid the pipefitters rate.

[30] Jerome Pride apparently signed his union membership documents on March 2. G.C. Exhs. 18, 19, and 20. However, his ''Application for Membership'' bears the signature date of ''2/5/92.'' G.C. Exh. 18. The discrepancy was unexplained.

[31] My conclusions in this regard are not altered by further testimony by Glen Pride that shortly after Jerome Pride's explosion, he had a conversation with Williams in which the latter stated that he was willing to recall either of the Pride brothers, that he did not care which one, but that only one was needed. The quit by Jerome Pride ended any speculation as to what would have been his fate thereafter.

knew that they had signed, but expressed no objection. In wishing them the best, Williams opined that the men were ''going to get screwed.''

Glen Pride admits to having quit. His separation would have occurred about 2 months after he attempted to join the Union. Thus, once recalled from the 2-day layoff, he remained on the New Badin job to its conclusion. He then joined the crew in the return for completion of the Heyworth project. However, he quit while the job was still in progress, explaining his action as follows:

> After the end of the New Badin job, it was everybody was working there was all relat[ed] and me and they went back to the Heyworth job and still the same bunch of guys, all relat[ed] and me. I couldn't get no one hardly to talk to me except Mike Lusk. He would correspond with me and . . . I could just see the daggers coming all the time and I told Gene,—the very last thing that got me was Johnny there. He was on the tractor there, it was pouring down rain and I was down in the hole and mentioned to him, Johnny to pick up a stringer—we was boring under the highway and I asked him to pick it up so when he pulled it it wouldn't dig into the ground. Johnny said, you are working the ditch, I am working the tractor, you stay down there and I will stay up here. Mike was right there, he heard it all. I said okay and we got the rod out of the ground and I told Mike, that's all I'm going to take, I am leaving. I told mike I am going to tell Gene and I told Gene, there's nothing against you and I have no hard feelings, I don't wish you no trouble or nothing, but I just can't work under these conditions. You guys are treating me like the black sheep out here and I just as soon not work under these conditions.
>
> I said if its all right with you, I am going to go on home. He said,—I told him, I wouldn't expect nobody to work under that, if I was the boss and . . . . [t]reated one person that way. Gene said I understand, and I went right on home. I told Mike Lusk I was going to tell him about it. Mike tried to get me to stay until the end of the week and I think that was on Wednesday when I quit.

As in the case of Jerome Pride, nothing in the complaint placed the Respondent on notice that the General Counsel would assert or attempt to prove that Glen Pride quit his job under conditions warranting statutory intervention. Unlike Jerome Pride, however, the reasons for quitting are substantiated by direct, primary evidence. Yet, here again the proof is flawed. This is not a classic constructive discharge situation. The onerous condition of work was ascribed by the discriminatee to coworkers, rather than management.

Consistent therewith, there is no direct evidence that Gene Williams was a contributing force behind any discomfort caused Pride by his coworkers. The possibility of inferring any accountability on his part is complicated by a number of factors. The first relates to the ambiguous quality of the General Counsel's proof. Glen Pride's self-described reasons for quitting were not shown to originate with anything more than interpersonal differences that could have been more imagined than real. Cf. *Santa Rosa Blueprint Service*, 288 NLRB 762, 789–793 (1988). Their evaluation requires an appreciation for the fact that disharmony is no stranger to the workplace. Managers often will have no influence over the prejudices and personality differences that contribute to a worker's discomfort on the job. In this light, it is not surprising that Glen Pride reacted to the entire incident by telling Williams, ''there's nothing against you and I have no hard feelings.''

Additionally, Glen Pride did not present himself as a likely candidate for any unlawful recriminations. According to his own account, he merely completed documents necessary to join the Union and conveyed to Williams that by doing so he hoped to achieve journeyman recognition. Although Gene Williams was aware of his hopes and argued that they would not be fulfilled, according to Pride, Williams otherwise voiced no objection. Moreover, as indicated, I am no more convinced that Logan and the Pride brothers had any more to do with Williams signing with the Charging Party, then they did with his signing with the Laborers Union. If any employee could be blamed for unionization of the job, it was Brad Williams, a member of the Operating Engineers Union, who threatened to quit rather than work nonunion in the Heyworth area.

It is true that Williams was angered and moved to discriminate more than a month earlier by his hassle with the Union over prevailing wage rates. However, Glen Pride distanced himself from that process. He emphatically denied having complained or to have ever actively discussed that issue. He professed total innocence in that regard by the following:

> I didn't know what the pay scale was, how was I to say anything [sic]? I don't know nothing about that. Nobody told me, the only thing I know is you made that adjustment up on the Virden job. . . . I just worked, that is all I did with Gene, is work. I didn't want no trouble or nothing.

Upon the foregoing, the prima facie case of discrimination turns entirely upon suspicion and argumentation, not proof. In the area of organizational activity, the evidence does not warrant a conclusion that Glen Pride would have been singled out for discrimination on that basis. Unlike Jay Logan, on the prevailing wage issue, I am unwilling to infer that Glen Pride was suspected of this employee effort that he neither participated in, nor supported. Were I to embrace that suspicion, I would not carry the speculation to the next step, by endorsing the unsupported argument that, because Williams opposed that activity, he might have believed that Glen Pride was a participant. Finally, were I to ignore the lack of support for either of these inferences, in the final analysis, I would not find, again absent evidence to that effect, that Williams would have acted upon that suspicion by encouraging coworkers to shun or express negative feelings toward the alleged discriminatee. In sum, the General Counsel has failed to furnish evidence warranting any reasoned basis for inferring that the Respondent was responsible for, or that union or protected concerted activity contributed in any degree to, the conditions prompting Glen Pride to quit his employment. The 8(a)(3) and (1) allegation in his case shall be dismissed.

E. *The Refusal to Bargain*

1. Preliminary statement

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by repudiating its collective-bargaining agreement by failing to adhere to particularized terms in the area of (1) benefit fund contributions, (2) contractual wage rates, (3) checkoff, and (4) referral/hiring procedures.

Insofar as relevant to this proceeding, the Union's contract, and the alleged breaches, and any violations found, as well as the recommended remedy, pertain solely to those of Respondent's employees actually performing plumbing and pipefitting work during either stage of the Heyworth job.[32]

2. The referral/hiring procedures

As to (4) above, article X of the collective-bargaining agreement establishes an exclusive, 48-hour hiring hall arrangement. By virtue thereof, signatory employers are barred from hiring directly, without clearance or referral by the Union, any employee utilized, either wholly or partially, in the performance of work covered thereby. Prior to New Badin, there is no evidence that these procedures were offended in the case of any employee of the Respondent engaged in such work. However, upon return to the Heyworth job in May, the Respondent's crew consisted of Brad Williams, Jeff Allen, Mike Lusk, and Glen Pride. Mike Lusk and Jeff Allen worked as laborers but also assisted Glen Pride who did the pipefitting work, along with a local licensed plumber that Williams had retained.[33] According to Terven, after the return to Heyworth, when he first visited the job unidentified employees were observed in ''cleanup'' activity that he defined as follows:

> Cleanup means going around and making sure that the ground is back to normal where they replaced the main, put the ditches back in, that they have barricades where they needed to be located, they have the curb boxes set. If there are any taps that need to be made, that they've got ditches open, they were doing that.

Terven credibly identified this as work covered by his Union's contract.

Yet, in May, the Respondent utilized employees other than Glen Pride in such work. Neither Lusk nor Allen were hired through the Charging Party's hiring hall. Williams admitted that both would periodically ''help with the pipe.'' Any vagaries in this admission were eliminated by undisputed testimony on the part of Terven that, during a second visit to the jobsite in mid-May, he observed Glen Pride in a ditch with two unidentified individuals ''installing piping.'' He testified that all were performing ''plumber or pipefitter work.'' He relates that he confronted Williams with the fact that fringe benefit contributions had to be made on behalf of these individuals, complaining further that they had not been cleared by the union hall. Williams allegedly became angry and instructed Terven to leave the property. Although the record does not identify these individuals, in light of evidence that Pride was the only crewmember working under a union permit, I am convinced that the others identified as performing unit work were not hired in accord with the contractual referral provisions. To this extent, the evidence demonstrates that the Respondent repudiated a contractual term in violation of Section 8(d) and 8(a)(5) and (1) of the Act.

3. Fringe benefit contributions; union scale

Article III of the labor contract specifies the hourly scale and fringe benefit contributions to be paid by signatory employers on behalf of two classes of employees. Thus, separate schedules are listed for ''Journeymen'' and ''Apprentices.'' See also articles XVI, XVII, and XVIII. (G.C. Exh. 4.)

The record establishes that, except for Marty Schuler, the apprentice referred by the Union, the Respondent did not pay contract wages or remit fringe benefit contributions during periods when its employees were engaged in pipefitting work at Heyworth.[34] Williams admitted that the latter were paid at the laborer rate no matter what work they performed. Terven testified that after receiving the documentation accompany Schuler's contributions,[35] he contacted Gene Williams concerning the omission of the other three employees, presumably the Pride brothers and Jay Logan. In addition, before being kicked off the job during his May 19 visit, Terven asserts that he told Gene Williams that fringe benefit contributions had to be made on behalf of the individuals he had just observed performing work covered by the contract.

At the hearing, Williams maintained that the contract only prescribed rates for journeymen and apprentices, since his employees were not in either category, they were not eligible for compensation under the labor contract. On this record, I agree. There is no showing that these individuals had achieved journeyman status, nor that any were any enrolled in an apprenticeship program.

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[32] No other work was performed by the Respondent with the Union's geographic jurisdiction.

[33] The contract applied to this final stage of the Heyworth job. Although scheduled to expire on April 30, in agreement with the General Counsel, I find that it was automatically renewed for an additional year pursuant to art. XXVII, sec. 27.1(3) thereof.

[34] The record includes a check received by Logan on April 27, well after his termination. It bears a documented description as a ''Heyworth correction.'' Logan could not clarify whether this pertained to prevailing rates, fringes, or both. G.C. Exhs. 13 and 14. Both sides place unacceptable interpretations on this payment. The General Counsel states that this was in response to demands on the Respondent by the Illinois Labor Department. However, Williams denied that this was the case, and Glen Pride testified that he received a correction check, but not for this job. Moreover, it was my impression from the record that correction checks similar to G.C. Exh. 4 were issued on various occasions before, during and possibly after completion of the Heyworth job. For this reason, Williams testimony, because of the shifting contexts, appeared to be inconsistent when in fact it might have been quite accurate. Thus, contrary to the General Counsel, this payment is not among my reasons for discrediting Williams. At the same time, the Respondent argues that this check, and Williams testimony that he paid the ''benefits'' substantiates that fringe benefits were in fact paid, albeit, directly to employees. Here too, there is a void in the record, for the proof does not disclose that checks were issued simultaneously to all employees who performed pipefitting work or the nature and extent of the payment. In any event, assuming that art. III of the contract applied, it would require direct payment to the trust funds, and payment to the employees would not comply.

[35] G.C. Exh. 3.

The work covered by the contract is broadly defined. However, the definitions of hourly rates and fringe benefit contributions are not based upon the nature of the work performed. Instead, these figures are embodied in schedules that specifically apply only to ''Journeymen'' and ''Apprentices.'' The limited scope of the pay and fringe schedules is understandable. For, the contract, on its face, appears to have been drafted on assumption that signatories will hire only those whose skill levels either are established by their status as certified journeymen or are under development through participation in a recognized apprenticeship program. The premise is an outgrowth of the skilled trades' traditional and historic attempt to protect the quality assurances inherent in the represented craft against erosion from the untrained and unskilled. Those ends are accomplished by the hiring scheme evident in the instant contract. Under article X, section 10.3, the Employer is obligated to request ''the Local Union to refer competent and skilled Journeyman and Apprentices.'' As for the rank-and-file complement, employers are allowed to engage in direct hiring solely under conditions set forth in section 10.9, which states as follows:

> If, upon request, the Local Union is unable within forty-eight (48) hours to supply Journeymen, including Journeyman with special skills, the employer may secure Journeymen from any other source.

There is no provision allowing direct hiring, under any circumstances, of the unskilled and the untrained. Against this background, it is understandable that the governing collective-bargaining agreement omits an ''Economic Package'' covering employees who are neither journeyman and apprentices. It is entirely conceivable that provision for the unskilled was consciously omitted because of contractual bans upon hiring those whose qualifications are uncontrolled, and hence might fall beneath accepted industrial standards for the craft.

Terven organized the Heyworth job by consenting to a special arrangement. Williams had resisted the contract because he was concerned that his incumbent employees would be replaced. Terven assuaged him by approving the use of his existing nonjourneymen and nonapprentices to perform pipefitting work. This eclectic solution amounted to a square peg that simply would not fit the proverbial round hole, provided by the Charging Party's collective-bargaining agreement. That document was multiemployer in scope and sought to maintain a competitive balance among all signatories. The concessions made by Terven could not be conferred on the unit-at-large without threatening the integrity of the craft and, as a corollary, the income and job opportunities of qualified apprentices and journeymen. Thus, for valid reasons, the standard form agreement includes no provision, inconsistent with overarching, wholly desirable need for craft preservation. Nowhere does it allow for the performance of pipefitting work by untested, uncertified labor.

Under the agreement, this latter segment of the work force is ignored by basic provisions defining wages and fringe benefits. Instead, obligations in these areas are imposed only in the case of ''Journeymen'' and ''Apprentices.'' Except for Schuler, not one of the Respondent's employees at Heyworth fell within either ''Economic Package'' set forth in article III. In essence, Terven had used a boilerplate agreement that lacked the flexibility necessary to accommodate his arrangement with the Respondent.[36] The General Counsel points to no provision of the collective-bargaining agreement, and I have found none, that requires signatory employers to pay specified hourly wages and fringe contributions on behalf of those who had not achieved journeyman status or who were not enrolled in a recognized apprenticeship program. This void precludes any finding of mutual assent concerning the basic pay and fringe benefit issue, and I am unwilling to presume the existence of any agreed-upon, binding obligation in that regard. Instead, it is my view that the Union entered an arrangement which, in legal effect, deferred appropriate compensation of the employees in question to prevailing wage laws.[37] In short, there is no showing that the Respondent's failure to make fringe benefit contributions and its payment of laborers' rates for pipefitting work violated any particular obligation embodied in the contract, and, accordingly, it follows that the Respondent did not violate Section 8(a)(5) and (1) on either count.[38]

4. The failure to remit union dues

As for the nonpayment of dues, Terven testified that on May 19, he intended to show Gene Williams the cards executed on March 3, but was prevented from doing so by Williams' outburst. There is no evidence that the Union made any attempt prior to May 19 to submit the checkoff authorizations to the Company. Nor is there evidence that, after that date, an attempt was made to serve these documents by mail. The Union knew or should have known that the Respondent would be in violation of Section 302 of the Act were it to remit dues if not possessed of, or aware of employee authorizations. See Section 302(c)(4). Accordingly, the record fails to demonstrate that a foundation had been

[36] In fact, until such time as the Union either enters the Respondent's employees in an apprenticeship program; or confers journeyman status upon them; or forces, in some other forum, their replacement under the contractual hiring hall arrangement, the existing contract will impose little, if any, monetary obligation upon the Respondent.

[37] It is entirely likely that the Respondent's pay practices violated the Illinois prevailing wage law. Thus, Terven testified credibly that union scale equaled the prevailing rate for journeymen and apprentice work under the Illinois statute. Unfortunately, the criteria for ascertaining obligatory rates of pay under the contract and the prevailing wage laws are materially distinct. Thus, notice is taken that the statutory rates apply depending solely on the nature of the work performed. Under this test, the fact that the affected employee is neither a journeyman nor apprentice furnishes no defense. Were contractual eligibility for benefits based on such a standard, the breach would be clear. However, in contrast with state law, the collective-bargaining agreement prescribes rates/fringes on the basis of the individual's recognized skill classification, without defining any rates for others even when they perform work covered by the contract.

[38] Were I convinced otherwise, I would reject Williams' explanation that he did not understand the fringe benefit contribution form, and was told by the Union's secretary that ''she would fill it out and put the amount and all I had to do was write the checks back.'' Obviously, the secretary would lack knowledge as to which employees engaged in covered work, or for how long. It is inconceivable that anyone affiliated with the Union would excuse Williams from reporting matters within his peculiar knowledge. Moreover, I credit Terven that he complained about the omissions. The demand having been made, Williams, if obligated, would have held a duty to inquire.

laid under article XXVI for the invocation of any checkoff obligation. The Respondent did not violate Section 8(a)(5) and (1) in this respect.[39]

5. Repudiation of the agreement

The evidence does not establish that the Respondent repudiated the contract. It was guilty of a single breach; namely, the runaround of the hiring hall provisions in manning the second and final phase of the Heyworth job. Beyond that, the General Counsel, in her posthearing brief argues that ''on May 19 Williams made clear his intent to repudiate the contract, by angrily running Terven off the job when Terven protested these contract violations.'' The incident proves nothing. It boils down to no more than a squabble. While I would agree that wholesale noncompliance could add up to repudiation, absent a rationale or precedent to the contrary, neither of which has been provided, I would find as a general proposition that a mere ''rhubarb'' as to the scope of the contract does not reflect upon a party's intent to annul, or actual annulment of any such obligations. In any event, in this instance, the May 19 confrontation was provoked by Terven's insistence that the Respondent was contractually bound to make payments on behalf of employees engaged in performing pipefitting work. These demands were erroneously grounded, and Williams reaction to them was by no means indicative of any comprehensive rejection of the agreement. The 8(a)(5) allegation in this respect is unsubstantiated and shall be dismissed.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(3) and (1) of the Act by, on April 3, 1992, discharging Jay Logan in reprisal for his concerted discussion of wage issues and his enlisting union support in that regard.

4. The Respondent violated Section 8(d) and Section 8(a)(5) and (1) of the Act by hiring employees to perform work covered by its collective-bargaining agreement with the Union, without first obtaining clearance or referral under the contractual hiring hall procedure.

5. Except as specified above, the Respondent engaged in none of the unfair labor practices alleged in the complaint.

6. The unfair labor practices found above have an affect upon commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it shall be recommended that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having discriminatorally discharged Jay Logan, shall be ordered to offer him immediate reinstatement and to make him whole for any resultant loss of earnings and other benefits. Backpay shall be computed on a quarterly basis from the date of discharge to the date of a proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[40]

ORDER

The Respondent, Williams Pipeline Company, Flora, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging membership in a labor organization by discharging or otherwise discriminating with respect to wages, hours, or other terms and conditions or tenure of employment.

(b) Refusing to bargain in good faith by failing to hire employees in accord with the hiring arrangement set forth in a subsisting collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Bargain in good faith by following the hiring provisions in our collective-bargaining agreement with the Union in connection with the performance of all plumbing and pipefitting work covered thereby.

(b) Offer Jay Logan immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(c) Remove from files any reference to the unlawful discharge of Jay Logan and notify him in writing that this has been done and that the discharge will not be used against him in any way.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at facilities in Flora, Illinois, copies of the attached notice marked ''Appendix.''[41] Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representa-

[39] There is no evidence that the Union ever acted favorably upon the applications for membership. There can be little question that the employees executed their checkoff authorizations solely because they expected full union membership. Serious question would exist as to whether the Employer could not legitimately remit, nor could the union accept, ''membership'' dues of employees who, in these circumstances, were refused any vestige of union membership.

[40] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[41] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

tive, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discourage membership in Plumbers and Pipefitters Local Union No. 99, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO or any other labor organization by discharging or otherwise discriminating with respect to employee wages, hours or other terms and conditions or tenure of employment.

WE WILL NOT refuse to bargain in good faith by failing to hire employees in accord with the hiring arrangement set forth in our collective bargaining agreement with the Plumbers and Pipefitters Local Union No. 99, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the hiring provisions in our collective bargaining agreement with the Plumbers and Pipefitters Local Union No. 99, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO in connection with the performance of all plumbing and pipefitting work covered thereby.

WE WILL offer Jay Logan immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the decision of the administrative law judge.

WE WILL remove from files any reference to the unlawful discharge of Jay Logan and notify him in writing that this has been done and that the discharge will not be used against him in any way.